

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2210 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHURABHAI MANJIBHAI PATIDAR DECEASED THRO'HEIRS AND L.R.

Versus

PATEL KODERBHAI BHAGWANBHAI

Appearance:

Mr Manish Raval for Mr Mukund Desai for Petitioners

MR RN SHAH for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/02/99

ORAL JUDGEMENT

By the impugned order, the learned Civil Judge (JD), Santrampur, in RCS No.30/93, has rejected the petitioner-plaintiff's application under Order 6 Rule 17 of C.P.C.for amendment in the suit. It is stated, inter-alia, that at the time of filing Civil Suit, the petitioner-plaintiff applied for copy of the revenue record on the basis of which the measurement of the disputed survey number was mentioned. However, in the year 1985, the petitioner came to know that there was a

re-survey and 10 gunthas of land was deducted from survey No.1/1 and added in survey No.1/2 belonging to the respondents by Entry No.318. The petitioner was not aware of the re-survey, alterations in the measurements and entry No.318 which was effected in the disputed survey number. It was further stated that even in the copy of the revenue record and abstracts 7/12 which was given to the petitioner, there is no reference to the aforesaid entry No.318. In this circumstance, application for amendment was made. This application was opposed by the defendant-respondent. The learned Judge rejected the application on the ground that the proposed amendment will change nature of the suit.

2. Having heard the learned Advocates for the parties, it clearly appears that there is some error with respect to mentioning of the exact measurement of the land and also reference to the relevant entry in the revenue record. It does not make a new case. Thus, it is erroneous to say that amendment will change the nature of the suit. There is obvious material illegality.

3. In view of the aforesaid, this Revision Application is allowed. The impugned order dated 21.10.95 passed by the Civil Judge (JD), Santrampur is quashed and set aside. The petitioner's application Exh.38 for amendment of the suit is granted on a cost of Rs.100/-. The petitioner to file amended plaint latest by 15 days from the date of receipt of the writ. It will be open for the defendant-respondent to file written statement to the amended plaint.

Rule made absolute to the aforesaid extent.
msp.